

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Replacement of Part 90 by Part 88 to)
Revise the Private Land Mobile Radio)
Services and Modify the Policies)
Governing Them)

and)

Examination of Exclusivity and)
Frequency Assignment Policies of)
the Private Land Mobile Radio Services)

PR Docket No. 92-235

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION
ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS
NEWSPAPER ASSOCIATION OF AMERICA
TELEPHONE MAINTENANCE FREQUENCY ADVISORY COMMITTEE

Date: January 16, 1996

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Table of Contents

	<u>Page</u>
Summary	iii
Reply Comments	2
A. The Opponents of Radio Service Consolidation Have Missed the Point of the <u>Report and Order and Further Notice of Proposed Rule Making</u>	2
B. Consolidation of Radio Services into Two Pools Is The Key to Enhancing Quality of Service and Promoting More Efficient Use of the Spectrum	4
C. Consolidation of Radio Services into Two Pools Will Allow the Commission to Remedy the Inequities Created by Historical Anomalies and Outdated Allocation Philosophies	5
D. The Protected Service Area Concept Proposed in LMCC's Comments Will Facilitate the Consolidation of Radio Services Into Two Pools	6
E. Other Aspects of LMCC's Proposal Minimize Any Possible Adverse Impact Upon Affected Licensees ..	7
F. Technological Advances Make It Unnecessary and Inefficient to Retain More than Two Service Pools	8
G. Consolidation of Radio Services into Two Pools Will Maximize the Beneficial Effects of Competition Among Frequency Coordinators	8
H. It Would Be Both Futile and Unproductive for the FCC to Attempt to Segregate Non-Public Safety Services That Have Some Public Safety Attributes/Responsibilities	9

I.	No Single Private Wireless User Organization or Association Can Claim 100 Percent Representation	10
J.	Consolidation of Radio Services Into Two Pools Does Not Mandate That Coordinators Use a Common Database or Develop a Database Encompassing All Part 90 Frequencies	13
K.	Consolidation of Radio Services Into Two Pools Will Produce a More Equitable and Efficient Environment	13
	Conclusion	15

S U M M A R Y

The Personal Communications Industry Association ("PCIA"), the Industrial Telecommunications Association ("ITA"), the Alliance of Motion Picture and Television Producers ("AMPTP"), the Newspaper Association of America ("NAA") and the Telephone Maintenance Frequency Advisory Committee ("TELFAC") ("Joint Commenters") believe the current structure of 20 different private land mobile radio services, each having their own unique frequency allocation table, is inimical to efficient use of the radio spectrum.

The Business Radio Service currently has more than 21,000 transmitters for each frequency at 512 MHz and below that it has been allocated. The Special Industrial Radio Service has more than 8,000 transmitters for each frequency allocated. Other private land mobile services have less than 3,000 transmitters per frequency. This situation is neither equitable nor in the public interest. Consolidation of the existing services into two pools will remedy the existing disparities.

Some of the commenting parties have expressed concern that consolidation will deprive existing licensees of access to the frequencies that they require. The Joint Commenters understand this concern but believe it is not valid, particularly in view of the transition plan proposed in LMCC's comments in this proceeding. With the protected service areas proposed by LMCC and the introduction of trunking technologies and digital techniques, it

becomes impossible, as a practical matter, to distinguish between different types of communications. These advanced technologies also make the distinction irrelevant. The only consideration is sufficient co-channel separation. In such a licensing environment, the differentiation between a taxicab user and a licensee engaged in highway construction is unimportant. Coordination must provide sufficient geographic separation between the systems, but the amount of use or whether the mode is base/mobile or repeater oriented does not need to be considered.

Some commenters have noted that consolidating radio services will force the existing frequency coordinators to compete with one another. The Joint Commenters welcome an environment in which users would be able to "shop around." Providing users with multiple service providers achieves several desirable objectives: (1) it promotes efficiency, (2) it provides tangible incentives for innovation, (3) it provides consumers with choices, (4) it rewards entities that provide the most valuable service.

Finally, it is not accurate that consolidation will compel the existing coordinators to utilize a common database or create a database that is reflective of all of the Part 90 frequencies. The certified coordinators will retain the discretion to develop databases that accomplish their purposes and satisfy the needs of their coordination customers.

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The Personal Communications Industry Association ("PCIA"), the Industrial Telecommunications Association ("ITA"), the Alliance of Motion Picture and Television Producers ("AMPTP"), the Newspaper Association of America ("NAA") and the Telephone Maintenance Frequency Advisory Committee ("TELFAC") (hereinafter the "Joint Commenters") respectfully submit the following Reply Comments responsive to the various comments filed on November 20, 1995 in the above-captioned proceeding.

REPLY COMMENTS

A. The Opponents of Radio Service Consolidation Have Missed the Point of the Report and Order and Further Notice of Proposed Rule Making.

1. In the "refarming" Report and Order and Further Notice of Proposed Rule Making, the Commission stated that the public interest would be served by consolidating the existing 20 private land mobile radio services into a minimum of two and a maximum of four service pools.¹ Of the twenty-one parties that responded to this aspect of the Commission's decision, fourteen have either overlooked or chosen to ignore the very definitive statements in the refarming decision. As the Joint Commenters read the refarming decision, consolidation is not an option, it is a *fait accompli*.

2. The Report and Order states "we have decided to consolidate the [Private Land Mobile Radio] services below 800 MHz."² This language is, unequivocally, a decision. Having reached this decision, the only significant issue that remains is the number of service pools that will be formed. Even on this

¹ Paragraph 52, Report and Order and Further Notice of Proposed Rule Making [hereinafter "refarming decision" or "Report and Order"], 10 FCC Rcd. 10076, wherein the Commission states "we conclude that reducing the radio services to between 2 (public safety and all other users) - 4 user groups is reasonable."

² Paragraph 55.

issue, the FCC has framed the outer limits of the decision. There will be at least two and no more than four service pools.

3. The majority of the parties filing consolidation plans or comments fall outside of the distinct parameters established in the Report and Order. Thirteen parties either resist completely the concept of radio service consolidation or, notwithstanding the consolidation decision, advocate the retention of specific services in their current structure.³ One other party, the American Petroleum Institute ("API"), accepts the principle of radio service consolidation but suggests there should be five service pools. API, therefore, also falls outside the parameters of the Commission's decision.

4. In the succeeding paragraphs, the Joint Commenters will examine in depth the variety of arguments and suppositions raised by the parties that commented on the consolidation decision.

³ The thirteen opponents of consolidation are: Alarm Industry Communications Committee, American Association of State Highway and Transportation Officials, American Automobile Association ("AAA"), Amtrak, Associated Public Safety Communications Officers, Association of American Railroads ("AAR"), Burlington Northern Santa Fe Corporation, Canadian Pacific Railway System, CSX Transportation, Norfolk Southern, Union Pacific Railroad/Missouri Pacific Railroad, Weyerhaeuser Company, and a coalition consisting of AAA, AAR, American Trucking Associations, Central Station Alarm Association, Forest Industries Telecommunications, International Taxicab and Livery Association, and Manufacturers Radio Frequency Advisory Committee, Inc.

B. Consolidation of Radio Services into Two Pools Is The Key to Enhancing Quality of Service and Promoting More Efficient Use of the Spectrum.

5. As the Joint Commenters observed in their Two Pool Consolidation Plan presented on November 20, 1995,⁴ the current structure of 20 different radio services, each having their own unique frequency allocation table, is inimical to efficient use of the radio spectrum. The present structure has perpetuated the distinction between those radio services having a relative wealth of frequencies and those that have far too few frequencies to satisfy the existing demand.

6. The Business Radio Service currently has more than 21,000 transmitters for each frequency at 512 MHz and below that it has been allocated. The Special Industrial Radio Service has more than 8,000 transmitters for each frequency allocated. Other private land mobile services have less than 3,000 transmitters per frequency. This situation is neither equitable nor in the public interest. Consolidation of the existing services into two pools will remedy the disparities that currently exist.

⁴ The Joint Commenters' Consolidation Plan is hereinafter referred to as either "the Two Pool Consolidation Plan" or simply "the Consolidation Plan."

C. Consolidation of Radio Services into Two Pools Will Allow the Commission to Remedy the Inequities Created by Historical Anomalies and Outdated Allocation Philosophies.

7. The inequities in the existing allocation tables are the result of historical anomalies and outdated allocation philosophies. To cite one relevant example, when the FCC allocated frequencies in the 152-162 MHz range in 1949,⁵ there were 131 major railroads in operation in the country. The railroads had planned their communications networks on the assumption that each railroad would have exclusive use of its own channel.⁶ Clearly, the number of major railroads in operation in the United States has declined markedly since 1949. There has, however, been no corresponding reduction in the number of frequencies allocated to the Railroad Radio Service.

8. It is understandable that some elements of the industry seek to preserve their current allocations. The Joint Commenters believe that private radio interests should have an abundance of frequencies from which to choose. In the current environment, however, this objective is not realistic. The consolidation plan proposed by the Joint Commenters addresses the realities of the current environment and seeks to fairly accommodate all potential private radio interests. The Commission must take immediate

⁵ Report and Order, Docket Nos. 8658, 8965, and 8972, adopted April 27, 1949, 13 F.C.C. 1190 (1949).

⁶ Policies and Practices in the Regulation of Private Radio Communications Systems, page 3-6.

action to promote more equitable use of the available frequencies. Consolidation of the existing 20 radio services into two pools would achieve this result.

D. The Protected Service Area Concept Proposed in LMCC's Comments Will Facilitate the Consolidation of Radio Services Into Two Pools.

9. Some of the commenting parties have expressed concern that consolidation will deprive existing licensees of access to the frequencies that they require. The Joint Commenters understand this concern but believe it is not valid, particularly in view of the transition plan proposed in the comments of the Land Mobile Communications Council ("LMCC").

10. Among other things, LMCC recommended that the Commission grant licensees the option of creating "Protected Service Areas" ("PSAs"). Under the PSA concept, licensees would have the flexibility to create a protected zone that would be consistent with their required service radii.⁷ The PSA concept was specifically designed to accommodate the established communications requirements of existing licensees. It is a key element in LMCC's overall effort to ensure that the "refarmed" spectrum preserves the ability of licensees to accommodate current and developing needs.

⁷ LMCC Comments filed November 20, 1995, paragraph 26.

11. The introduction of the PSA concept is entirely consistent with, and complementary to, the Joint Commenters' Two Pool Consolidation Plan. With the PSA approach, licensees would have the ability to carve out a protected service zone. The current subjective distinctions between particular services would no longer be necessary as a device for limiting the "intrusion" of other, possibly conflicting uses. Instead, where there is justification for a protected zone, the PSA approach would allow licensees to create an area where their communications would be protected.

E. Other Aspects of LMCC's Proposal Minimize Any Possible Adverse Impact Upon Affected Licensees.

12. LMCC also recommended that existing licensees be given a six-month "head start" in filing applications for the new 12.5 kHz channels. Essentially, LMCC's recommendation would allow existing licensees to claim the adjacent upper 12.5 kHz bandwidth if they are converting their existing operations to a spectrally efficient technology.⁸ This approach, LMCC stated, will provide a tangible incentive for existing users to convert their systems to more efficient technologies. This approach would also provide existing users with an ideal opportunity to acquire the additional communications capability that may be required to meet future needs.

⁸ LMCC Comments, paragraph 24.

F. Technological Advances Make It Unnecessary and Inefficient to Retain More than Two Service Pools.

13. With protected service areas and the introduction of trunking technologies and digital techniques, it becomes impossible, as a practical matter, to distinguish between different types of communications. These advanced technologies also make the distinction irrelevant. The only consideration is sufficient co-channel separation. In such a licensing environment, the differentiation between a taxicab user and a licensee engaged in highway construction is unimportant. Coordination must provide sufficient geographic separation between the systems, but the amount of use or whether the mode is base/mobile or repeater oriented does not need to be considered.

G. Consolidation of Radio Services into Two Pools Will Maximize the Beneficial Effects of Competition Among Frequency Coordinators.

14. Some commenters have noted that consolidating radio services will force the existing frequency coordinators to compete with one another. Opponents of radio service consolidation perceive competition as undesirable. The Alarm Industry Communications Committee, for example, argues that competition "causes complications."⁹ One of the "complications" anticipated is that private land mobile users would have the ability to "shop around."

⁹ Alarm Industry Communications Committee comments, page 3.

15. The outlook of the Joint Commenters is diametrically opposed to the comments of the Alarm Industry Communications Committee and those expressing a similar view. The Joint Commenters welcome an environment in which users would be able to "shop around." Indeed, "shopping around" should be particularly attractive to an FCC that seeks, as one of its fundamental objectives, to promote a greater level of competition in the telecommunications arena. The Commission is well-steeped in the advantages of competition. Providing users with multiple service providers achieves several desirable objectives: (1) it promotes efficiency, (2) it provides tangible incentives for innovation, (3) it provides consumers with choices, (4) it rewards entities that provide the most valuable service.

H. It Would Be Both Futile and Unproductive for the FCC to Attempt to Segregate Non-Public Safety Services That Have Some Public Safety Attributes/Responsibilities.

16. The comments evidence a desire on the part of some user organizations to demonstrate that the services provided by their members are of special benefit to the public. A host of entities ranging from the railroads to utilities to the central station alarm industry and roadside repair/tow truck operators labor to show how their services are essential to the public safety. The Joint Commenters encourage the Commission not to waste its valuable resources on an effort to designate certain entities as public safety.

17. In the view of the Joint Commenters, those local government agencies and other entities that respond to fires, provide police services and provide emergency medical service are truly "public safety." Outside those three categories, virtually all other private wireless eligibles have some attributes of public safety. Food processors use radio to ensure that food products sold to consumers are safe for consumption. This activity clearly has elements of public safety. Similarly, use of radio by airlines for ground communications contributes to public safety. So also does a construction company's use of radio to ensure the safety of workers digging ditches.

18. Outside of police, fire and ambulance services, there is no universally accepted definition of public safety. Moreover, it is pointless to try to develop such a definition because there are aspects of public safety inherent in virtually every Part 90 communications system.

I. No Single Private Wireless User Organization or Association Can Claim 100 Percent Representation.

19. Some commenters argue against consolidation on the grounds that consolidation will somehow taint or dilute the representational quality of the existing frequency coordination structure. The Joint Commenters recognize that it is desirable for the frequency coordination function to be performed by entities that are representative of the applicants for whom they

are performing the service. However, representation is not an absolute -- not now and not ever.

20. Virtually every user organization that has been certified by the FCC as a frequency coordinating committee currently performs coordination services for entities that are not included among its organizational membership. In that sense, the representational quality constitutes a desirable factor but not an absolute.

21. An element of the parties participating in this proceeding would argue that some of the Joint Commenters, such as PCIA or ITA, are not competent to coordinate frequencies for tow truck companies because neither PCIA or ITA are directly representative of tow truck companies. This argument is self-defeating on three grounds: first, both PCIA and ITA currently do coordinate frequencies for tow truck operators, both at 800 MHz and below; second, both PCIA and ITA include tow truck companies among their members; and third, PCIA and ITA are representative of private wireless users in general and, for frequency coordination purposes, no higher standard is required. Indeed, it is a fact that if one were to ask existing private land mobile licensees to name the certified frequency coordinator for their particular radio service, a large majority would probably not be able to do so.

22. In this same vein, Weyerhaeuser Company argues that the existing radio service structure should be retained for a five-to-ten-year period in order to allow time for the "incoming" frequency coordinators to become familiar with the various industry-specific needs of the private radio users they represent. Weyerhaeuser's comments miss the essential point of consolidation. The FCC has decided to consolidate radio services. It clearly is not consolidating coordinators.

23. Neither Weyerhaeuser nor any other licensee will necessarily have to change their current coordination practices. Weyerhaeuser will still have the option of using the Forest Industries Telecommunications ("FIT") for frequency coordination. And, if for some reason, Weyerhaeuser should determine that FIT no longer provides the best service, it will have the option of using other coordinators as well. In that sense, competition in the frequency coordination function is a blessing and not a detriment.

J. Consolidation of Radio Services Into Two Pools Does Not Mandate That Coordinators Use a Common Database or Develop a Database Encompassing All Part 90 Frequencies.

24. Opponents of consolidation argue that consolidation will compel the existing coordinators to utilize a common database or create a database that is reflective of all of the Part 90 frequencies. This is not the case. The certified coordinators will retain the discretion to develop databases that accomplish their purposes and satisfy the needs of their coordination customers. As in any competitive service, coordinators will have the motivation to respond to the needs of their customer base, whatever they envision their customer base to be.

25. With respect to the database and exchange of information among coordinators, it is imperative that there be real-time, electronic exchange of data. All certified frequency coordinators must have the capability of electronically transmitting and receiving frequency notifications. The Commission should be absolutely firm on this point. In this day and age, there is no excuse for certified frequency coordinators operating without state-of-the-art capability not to exchange coordination data electronically.

K. Consolidation of Radio Services Into Two Pools Will Produce a More Equitable and Efficient Environment.

26. Inherent in many of the comments filed in opposition to

consolidation is the supposition that consolidation will increase interference levels. Some commenters speculate that there will be dramatic adverse effects upon operational safety. They predict that their frequencies will fall victim to the same poor quality characteristics currently observed in many VHF radio operations.

27. Some express concern that, with consolidation, coordinating committees will lose the insights that are characteristic of the existing environment, i.e., "whether sharing among the various applicants is possible."¹⁰ There is some apprehension that coordinators will no longer be positioned to take into consideration operational factors that may make it easier for applicants to share frequencies.

28. None of those opposed to consolidation, however, provide any factual basis to support their predictions of increased interference or operational incompatibility. No one has offered any cogent explanation or rationale for their perceptions. The Joint Commenters suggest that such concerns are both overstated and unwarranted. The Joint Commenters firmly believe that, as in other areas of communications, competition will produce a better product at lower rates and with better speed of service.

¹⁰ Comments of Alarm Industry Communications Committee, page 4.

CONCLUSION

29. In the view of the Joint Commenters, consolidation of the existing 20 radio services into two service pools, Public Service and Public Safety, will best serve the public interest.¹¹

30. Consistent with the foregoing discussion, the Commission should: (1) proceed immediately to implement the consolidation decision reached in the Report and Order and Further Notice of Proposed Rule Making; and (2) create two service pools in the manner recommended by the Joint Commenters in the Comments filed November 20, 1995.

¹¹ The precise names given to the two pools are not of particular importance. The Joint Commenters believe strongly, however, that the names used should be reflective of the purposes served by the two pools. For this reason, the Joint Commenters oppose any designation for the Public Service pool such as "non-commercial" or other terminology that incorporates the word "non". "Non" words are not sufficiently descriptive of the very critical role that the private land mobile radio services serve in the nation's social and economic structures.

WHEREFORE, THE PREMISES CONSIDERED, the Joint Commenters respectfully urge the Federal Communications Commission to act in accordance with the comments and conclusions expressed herein.

Respectfully submitted,

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